

ONE HUNDRED ELEVENTH CONGRESS  
**Congress of the United States**  
**House of Representatives**

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM  
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Majority (202) 225-5051  
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April 27, 2009

The Honorable Hilda Solis  
Secretary  
U.S. Department of Labor  
200 Constitution Ave., NW  
Washington, D.C. 20210

Dear Secretary Solis:

On March 31, 2009, the Office of Inspector General (OIG) at the Department of Labor published a performance audit titled, "Employers With Reported Fatalities Were Not Always Properly Identified and Inspected Under OSHA's Enhanced Enforcement Program."<sup>1</sup> This report identified multiple failures in the Occupational Safety and Health Administration's (OSHA) Enhanced Enforcement Program (EEP) which resulted in a number of avoidable fatalities. These shortcomings raise considerable concern, especially at a time when employee safety could suffer as employers are hard pressed for cash.

The EEP was revised in 2008 to focus on "recalcitrant employers," those with prior history of past, serious, willful and/or repeat violations of OSHA.<sup>2</sup> This change was made to ensure that OSHA's limited resources were used to inspect workplaces with the highest risk of hazardous conditions.<sup>3</sup> However, according to the aforementioned performance audit, OSHA has failed to place the "appropriate management emphasis and

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<sup>1</sup> *Employers with Reported Fatalities Were Not Always Properly Identified and Inspected Under OSHA's Enhanced Enforcement Program*, U.S. Department of Labor Office of Inspector General, Report No. 02-09-203-10-105, March 31, 2009, available at <http://www.oig.dol.gov/public/reports/oa/2009/02-09-203-10-105.pdf>.

<sup>2</sup> OSHA Enforcement: Ensuring Safe and Healthy Workplaces, available at <http://www.osha.gov/as/opa/2008EnforcementData120808.html>.

<sup>3</sup> *Id.*

resources on this program.”<sup>4</sup> Based on the OIG report, the effective implementation of EEP could potentially eliminate hundreds of workplace fatalities.

The OIG report found that in 97% of the 282 sampled EEP qualifying cases, OSHA did not comply with at least one of the EEP requirements<sup>5</sup>:

1. **Designating EEP Cases:** Problems with the qualified history component have reduced the number of cases; delayed designation; and increased the risk of misclassification, resulting in the improper designation of 149 of 282 (53%) sampled EEP qualifying cases as non-EEP cases. Twenty-four of these 149 misclassified employers had 33 subsequent fatalities.<sup>6</sup>
2. **Inspections of Related Worksites:** In general, OSHA did not use the Site Specific Targeting or the alternate worksite inspection program to inspect related worksites of the 282 sampled EEP qualifying cases when company-wide safety and health issues indicated that workers at other employer worksites were at risk for serious injury or death.<sup>7</sup> Thirty-four of the employers in the sampled cases had 47 subsequent fatalities at related worksites.<sup>8</sup>
3. **Enhanced Follow-up Inspections:** OSHA did not follow up on 146 of 282 (52%) sampled EEP qualified cases to ensure abatement and determine whether employers were committing similar violations. OSHA failed to follow up with 54 of the employers who were included in the sample which had multiple EEP qualifying and/or fatality cases, 5 of these multiple offenders had subsequent fatalities on the same worksites.<sup>9</sup>
4. **Enhanced Settlement Provisions:** One hundred eighty-eight of the 282 EEP qualifying cases included a settlement agreement. Of these 188 EEP qualifying cases, only 35 (19%) included enhanced settlement provisions. Forty-five employers had multiple EEP qualifying and/or fatality cases and settlement agreements which did not include enhanced settlement provisions. These employers had 32 subsequent fatalities following the settlement agreement.<sup>10</sup>
5. **No Enhanced Enforcement Actions:** In 29 EEP designated cases, OSHA failed to take any of the appropriate enhanced enforcement actions. Sixteen employers

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<sup>4</sup> *Employers with Reported Fatalities Were Not Always Properly Identified and Inspected Under OSHA's Enhanced Enforcement Program*, U.S. Department of Labor Office of Inspector General, Report No. 02-09-203-10-105, at 3, March 31, 2009, available at <http://www.oig.dol.gov/public/reports/oa/2009/02-09-203-10-105.pdf>.

<sup>5</sup> Id. at 2.

<sup>6</sup> Id. at 4.

<sup>7</sup> Id. at 6.

<sup>8</sup> Id.

<sup>9</sup> Id. at 8.

<sup>10</sup> Id. at 9.

subsequently had 20 fatalities, 14 fatalities were in cases that shared similar violations as the EEP qualified cases.<sup>11</sup>

To better understand what steps OSHA will undertake to rectify this failure, I ask that you respond to the questions listed after each OIG recommendation and OSHA response:

**IG Recommendation 1:** Form an EEP Task Force to make recommendations to improve program efficiency and effectiveness in the following areas:

- a. Targeting indifferent employers most likely to have unabated hazards and/or company-wide safety and health issues at multiple worksites.
- b. Ensuring appropriate actions (i.e., follow-up and related worksite inspections) are taken on indifferent employers and related companies.
- c. Centralizing data analysis to identify employers with multiple EEP qualifying and/or fatality cases that occur across Regions.
- d. Identifying and sharing Regional and Area Offices' "best practices" to improve compliance with EEP requirements.<sup>12</sup>

**OSHA Response:** You have indicated that you had "always intended to constitute an Agency Task Force to review and strengthen the EEP" and that the IG's recommendations "provide a well-considered starting blueprint for the evaluation of the EEP."<sup>13</sup>

**Questions:**

1. When will the Agency Task Force be created?
2. How will the Agency Task Force be staffed?
3. What additional areas will you use beyond the "well-considered starting blueprint" suggested by the IG?
4. What is the time table for the implementation of the Task Force's recommendations?

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<sup>11</sup> Id. at 10.

<sup>12</sup> Id. at 15.

<sup>13</sup> Id. at 50.

**IG Recommendation 2:** Revise EEP directive to address issues with prior qualifying history and designation, and to provide specific criteria when National Office EEP-Alert Memoranda are to be issued.<sup>14</sup>

**OSHA Response:** You have stated that “OSHA’s EEP Task Force should evaluate the issue of prior qualifying history and designation and the need for specific criteria when National Office EEP – Alert Memorandum are to be issued.”<sup>15</sup>

**Questions:** This response does not indicate how the issues with prior qualifying history and designation will be dealt with in the interim. As you stated, “even a single fatality is one too many.” Please outline how you will implement the IG’s recommendations while the Task Force debates the issues.

**IG Recommendation 3:** Provide formal training on EEP requirements including designation, consideration of related worksite inspections, enhanced enforcement follow up, and enhanced settlement provisions to ensure consistent application of EEP requirements.<sup>16</sup>

**OSHA Response:** “When the revised EEP directive is completed...we expect that OSHA would provide Webinar training for all OSHA field personnel to assume understanding of the directive.”<sup>17</sup>

**Questions:** Like your response to Recommendation 2, you fail to address how OSHA will implement formal training between now and the completion of the EEP directives. Employees cannot wait for the Task Force to complete its recommendations.

1. How will OSHA improve the formal training in the interim?
2. What will be included in interim formal training?
3. How will formal training be provided in the interim?

**IG Recommendation 4:** Incorporate enhanced settlement provisions in OSHA’s informal settlement template.<sup>18</sup>

**OSHA Response:** “We will raise the issue of incorporating enhanced settlement provisions in our formal settlement template. However, since the Agency works in conjunction with the Office of the Solicitor and settlement provisions are subject to their

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<sup>14</sup> Id. at 16.

<sup>15</sup> Id at 45.

<sup>16</sup> Id. at 16.

<sup>17</sup> Id. at 46.

<sup>18</sup> Id. at 16.

input on the matter, we cannot definitively commit that such provisions will be incorporated.”<sup>19</sup>

**Questions:**

1. What enhanced settlement provisions will be incorporated?
2. What is the procedure through which enhanced settlement provisions are incorporated in OSHA’s formal settlement template?
3. When will enhanced settlement provisions be incorporated into the formal settlement template?
4. Will enhanced settlement provisions be in place for formal settlements during the incorporation process?
5. In light of the Office of the Solicitor’s function in the formal settlement process, what steps, if any, can be taken to ensure that such provisions will be incorporated?

**IG Recommendation 5:** Establish controls for periodic reconciliation of the EEP log to OSHA’s data system (currently IMIS).<sup>20</sup>

**OSHA Response:** OSHA is “convinced that any concerns raised by the OIG about periodic reconciliation of the EEP log will be resolved with roll-out of the new OSHA Information System (OIS),” a separate data base with biweekly reporting by the Regional Offices.<sup>21</sup>

**Questions:**

1. When will OIS be rolled-out?
2. What controls are included in OIS?

**IG Recommendation 6:** Develop and distribute a crosswalk to Federal OSHA citations for state standards that have a different coding than Federal OSHA standards.<sup>22</sup>

**OSHA Response:** OSHA “commit[s] to undertake an effort, in conjunction with the States, to have the States provide crosswalk information for the Agency’s data system that will link different State citable standards to its Federal equivalent. The availability of

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<sup>19</sup> Id. at 46.

<sup>20</sup> Id. at 16.

<sup>21</sup> Id. at 46.

<sup>22</sup> Id. at 16.

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*April 27, 2009*


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IT resources and competing priorities for those funds will determine the Agency's ability and timetable in completing this task."<sup>23</sup>

**Questions:**

1. How much will it cost to develop and distribute a crosswalk to Federal OSHA citations for state standards that have a different coding than Federal OSHA standards?
2. How long will it take to develop and distribute a crosswalk to Federal OSHA citations for state standards that have a different coding than Federal OSHA standards?
3. What priorities are competing for existing funds?

Please provide answers to the above questions by close of business on May 8, 2009. If you have any questions, please contact Marvin Kaplan, Counsel, at (202) 226-1133.



Edolphus Towns  
Chairman

Sincerely,



Darrell Issa  
Ranking Member

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<sup>23</sup> Id. at 46.